

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2521 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RASHMIKANT CHANDUBHAI AMIN

Versus

STATE OF GUJARAT

Appearance:

MR SANJAY DOSHI FOR MR DF AMIN, Advocate for the Petitioner.
UR BHATT, AGP , for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 11/07/96

ORAL JUDGEMENT

Petitioner Rashmikan Chandubhai Amin (hereinafter referred to as "the detenu"), by way of this petition under Article 226 of the Constitution of India, has challenged the leagality and validity of the order of detention dated 20-1-1996 passed by the District Magistrate, Kheda (hereinafter referred to as "the detaining authority") under section 3 (1) of the Gujarat

Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as " the Act").

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on four pending trial and one pending investigation cases registered against the detenu for offences punishable under the Bombay Prohibition Act. Beside these cases, a further reliance is also placed by the detaining authority on the statements of three witnesses wherein they have alleged anti-social and naferious activities of the detenu. The identity of these witnesses is not disclosed to the detenu by the detaining authority invoking the provisions of sub-section (2) of section 9 of the Act. Considering these materials, the detaining authority was of the view that the detenu is a "bootlegger" within the meaning of section 2 (b) of the Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed, which is under challenge in the present petition.

This petition is required to be allowed on the first submission made by Mr. Sanjay Doshi for Mr. D.F.Amin that the Circle Police Inspector, who recorded the statements of the witnesses, has not verified the correctness of the incidents narrated therein and the allegations made against the detenu and, therefore, the detaining authority, who has accepted the said statements without any verification, has passed the order of detention mechanically by invoking the provisions of section 9(2) of the Act. It is, therefore, submitted that the finding arrived at by the detaining authority that it is against public interest to disclose the names and addresses of the witnesses is not genuine and consequently the order of detention is required to be quashed.

I find substance in the submission of Mr. Doshi. Admittedly , in the instant case, there is no verification by the Circle Police Inspector, Khambhat, who recorded the statements and these statements had been placed before the detaining authority who accepted the same without the same having been verified without disclosing the identity of the witnesses to the detenu by exercising powers under section (2) of the Act on the ground that it is against public interest to disclose the names and addresses of the witnesses. This has resulted into denial to the detenu of his right to make an effective representation guaranteed under Article 22 (5)

of the Constitution of India. This has vitiated the order of detention against the detenu.

In the result, this petition is allowed. The impugned order of detention dated 20-1-1996 is quashed and set aside. The detenu Rashmikant Chandulal Amin is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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